

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

*In Re* Flint Water Cases

No. 5:16-cv-10444-JEL-MKM  
(consolidated)

Hon. Judith E. Levy  
Mag. Mona K. Majzoub

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**PLAINTIFF BROWN & ROGERS’ RESPONSE TO HOSPITAL  
DEFENDANTS’ REQUEST FOR EXEMPTION / PARTIAL EXEMPTION  
FROM CASE MANAGEMENT ORDER**

Pursuant to this Honorable Court’s Order Regarding Matters Discussed During April 26, 2019 Telephonic Status conference (ECF No. 819), Individual Plaintiffs BROWN and ROGERS hereby submit the following Response to Hospital Defendants’ Request for Exemption / Partial Exemption from the Court’s Case Management Order (ECF 837 & 838).

For the reasons expressed below, Plaintiffs *Brown* and *Rogers* request that their cases be placed on a “dual track” – the current CMO on which to conduct the discovery involving common facts and related legal issues, and a separate track on which to conduct discovery unique and specific to Plaintiffs’ claims against hospitals and/or Plaintiff’s legionella claims. The specific dates / time needed under the separate track for the hospital / legionella specific discovery can be worked out and with counsel for hospital defendants.

Plaintiffs Brown and Rogers contracted Legionella Pneumonia during the Flint Water Crisis<sup>1</sup>. *Brown* and *Rogers* assert claims against the state and municipal defendants, arguing that their Legionnaires' disease (LD) was caused and/or contributed to by said defendants' gross negligence in causing the Flint water crisis (which contaminated the Flint water and predisposed it to legionella infiltration). These claims are similar to the claims filed by other Flint Water Plaintiffs. Unlike most other Flint Water Plaintiffs, *Brown* and *Rogers* assert claims against Hurley Hospital and/or McLaren Flint Hospital, alleging they contracted LD while exposed to the hospital's legionella tainted water supply<sup>2</sup>.

Besides being a named Defendant in the *Brown* and *Marble* cases pending before this Court, McLaren Flint Hospital is also a named Defendant in at least twenty-four other cases pending in Genesee County Circuit Court. Those state court cases likewise allege that Plaintiffs contracted LD from Defendant's hospital after being exposed to its legionella tainted water supply. McLaren's primary defense in the state legionella cases has been to fault the very same state and municipal employees who are named as Defendants in the herein Flint Water cases. It is anticipated that both McLaren and Hurley will likewise fault co-

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<sup>2</sup> Both McLaren and Hurley's water distribution system were on Flint water. *Rogers* alleges she contracted her disease while admitted at Hurley Hospital in February and March of 2015, shortly before her diagnosis of LD. *Brown* died from Legionella Pneumonia on January 9, 2015, and was admitted to both Hurley Hospital and McLaren Flint between August 2014 through December 2014. *Brown* alleges she acquired her LD from either McLaren or Hurley.

defendants in the *Brown*, *Marble*, and *Rogers* matters, and allege against them the same claims as alleged by the Flint Water Plaintiffs. Thus, there are common facts and issues to be litigated by Plaintiffs *Brown*, *Rogers* and the hospital defendants under the current CMO. Plaintiffs *Brown* and *Rogers* therefore adopt and concur with, in part, the position proposed by McLaren, that discovery proceed under the CMO as it pertains to common facts, issues and claims, but that a separate discovery track issue as to facts, issues and claims specific and unique to Plaintiffs' hospital claims. Plaintiffs propose, however, that this separate track run *concurrently* with the CMO. The legionella Plaintiffs will require significant discovery from the hospitals and other witnesses familiar with and privy to the facilities' water supply and ventilation systems. This will permit the legionella Plaintiffs the opportunity to factually discover and develop their claims against the hospitals, at the same time as the hospitals are permitted to factually discover and develop their defenses.

Respectfully submitted,

Fieger, Fieger, Kenney & Harrington, P.C.

/s/ Todd J. Weglarz  
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Dated: May 10, 2019

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2019, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

/s/ Todd Weglarz